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Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

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Committee against Torture

Communication No. 450/2011

Decision adopted by the Committee at its fifty-third session (3–28 November 2014)

Submitted by:	Ali Fadel (represented by counsel, Tarig Hassan, of Advokatur Kanonengasse)
Alleged victim:	Ali Fadel
State party:	Switzerland
Date of complaint:	3 February 2011 (initial submission)
Date of present decision:	14 November 2014
Subject matter:	Deportation of the complainant to Yemen
Procedural issue:	None
Substantive issue:	Non-refoulement
Article of the Covenant:	3

[Annex]

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Annex

Decision of the Committee against Torture under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (fifty-third session)

concerning

Communication No. 450/2011

Submitted by:	Ali Fadel (represented by counsel, Tarig Hassan of Advokatur Kanonengasse)
Alleged victim:	Ali Fadel
State party:	Switzerland
Date of complaint:	3 February 2011 (initial submission)

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 14 November 2014,

Having concluded its consideration of communication No. 450/2011, submitted to the Committee against Torture on behalf of Ali Fadel under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Having taken into account all information made available to it by the complainant, his counsel and the State party,

Adopts the following:

Decision under article 22, paragraph 7, of the Convention against Torture

1.1 The complainant is Ali Fadel, a Yemeni national born on 1 January 1984 and residing in Switzerland. He claims that his deportation to Yemen would constitute a violation by Switzerland of article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The complainant is represented by counsel, Tarig Hassan, of Advokatur Kanonengasse.

1.2 On 8 February 2011, the Rapporteur on new complaints and interim measures decided to request interim measures from the State party to suspend the complainant's deportation to Yemen.

The facts as submitted by the complainant

2.1 The complainant belongs to the low-status Akhdam caste, who account for 2–5 per cent of the population in Yemen and who face many forms of social and economic discrimination. At the age of 14, he left his home village, Al Geydel, and moved to the town of Ta'iiz. There, he obtained a false identity card to conceal his Akhdam background and was recruited to work with a shopkeeper who was unaware that he belonged to the caste.

2.2 In 2002, when his employer suggested to him that he should marry a neighbour's daughter, the complainant felt obliged to disclose his Akhdam background, which in principle barred him from marrying a woman from another caste. This sparked an angry response from his employer, who dismissed him and suggested that he should flee before the neighbour found out and tried to kill him. The complainant therefore fled to Sana'a and stayed in an Akhdam camp where his brother was living.

2.3 The complainant asserts that, when the young woman's father heard about the complainant's Akhdam background, he considered that his family's honour had been sullied and went looking for him. The young woman's father also lodged a complaint against the complainant's employer, who was arrested, then released.

2.4 On 26 December 2002, the police arrested the complainant in the Akhdam camp in Sana'a and imprisoned him for theft and possession of false identity papers.[1] When he arrived at the criminal investigation prison in Sana'a, the guards accused him of trying to sully the honour of the Yemeni people. As a result, he was tortured. The complainant was beaten and his head plunged in a container filled with human urine and excrement before being thrown into a basin of ice-cold water to wash himself. He was subsequently placed alone in a cell measuring approximately 1.5 by 2 square metres, where he slept on the floor, still in his wet clothes. During the interrogations, the criminal investigation officers asked him questions about the alleged theft. They also asked him why he had tried to dishonour Yemen by applying for an identity card, since, as an Akhdam, he had no rights and he belonged with filth. Following each interrogation and torture session, he was left alone in a cell until he felt better. He was subsequently placed in a shared cell with other detainees. The forms of torture that he endured included being sodomized with a Coca-Cola bottle, which caused injuries and bleeding. He was also regularly beaten up and insulted, suspended by his feet until he lost consciousness and burned with cigarettes. This treatment was inflicted on him daily throughout the first week, and then about three times a week thereafter.

2.5 On 13 June 2003, a man dressed as a sheik ordered the prison guard to open the door of the complainant's cell. The complainant notes that everything appeared to have been arranged with the guards by his former employer, who had contacts among the authorities. According to the complainant, his former employer allegedly also helped him to escape, out of fear that, when on trial, the complainant might disclose the employer's engine oil smuggling activities. The complainant was then brought to another man's house, where he remained in hiding until his departure from Yemen, which was organized and paid for by his former employer. At that moment, the man handed him a newspaper containing a summons for him to appear in court and told him that failure to appear would result in a trial in absentia under the law applicable to fugitives.

2.6 On 25 August 2003, the complainant flew to Cairo accompanied by a Somali national, who passed him off as his son on his passport. On 29 August 2003, they took off for Geneva. From there, they were supposed to travel by train to the Netherlands and then on to the United Kingdom. When they arrived in Geneva, the Somali national, after saying that he was going out to find something to eat, never returned.

2.7 On 1 September 2003, the complainant applied for asylum in Switzerland, citing the risk of persecution and torture in his country of origin because of belonging to the Akhdam caste.

[1] The complainant, on the other hand, has provided a statement by his officially appointed lawyer (in Arabic with an English translation), which states that he was charged by a court for alcohol consumption, prostitution and debauchery. The complainant also provides a note from his lawyer, dated 21 June 2006, indicating that the complainant is considered to be a fugitive from justice and that the prosecution had postponed laying charges before the court.

2.8 On 6 December 2004, the former Swiss Federal Office for Refugees (now the Federal Office for Migration) turned down his application for asylum and ordered his deportation from Switzerland before 31 January 2005. On 7 January 2005, he lodged an administrative appeal with the Swiss Asylum Appeals Commission (currently the Federal Administrative Court), which dismissed his appeal on 14 March 2006. On 6 May 2006, the complainant filed an application for reconsideration with the Swiss Asylum Appeals Commission, which refused to take action on the grounds that the fees for the legal proceedings had not been paid.

2.9 On 22 February 2007, the complainant was taken by the Swiss police to the Yemeni Consulate in Geneva to obtain a laissez-passer for the purpose of his deportation. On that occasion, the Consul of Yemen learned that he belonged to the Akhdam caste and threatened him with reprisals if he returned to Yemen.

2.10 That same day, the complainant submitted a new appeal to the Federal Office for Migration for reconsideration of the decision of 6 December 2004, on the grounds that he was afflicted with a nasal mucous membrane disorder. The complainant asserted that he would not be able to receive adequate treatment in Yemen because of belonging to an inferior caste.

2.11 On 13 September 2007, the Federal Office for Migration dismissed the appeal on the grounds of non-payment of legal fees. On 18 October 2007, the complainant lodged an administrative appeal against the dismissal and applied to have the deportation order quashed.

2.12 On 8 November 2007, the Federal Administrative Court rejected the complainant's appeal on the grounds that his state of health did not justify suspending the deportation order. The complainant then went into hiding for two years. The Swiss police arrested him in Biel/Bienne on 7 November 2009 in the course of an identity check.

2.13 On 12 November 2009, the complainant filed a second application for reconsideration with the Federal Office for Migration based on the threat made by the Consul of Yemen in Geneva. This application was rejected on 9 February 2010.

2.14 On 11 March 2010, the complainant lodged an appeal with the Federal Administrative Court and invoked new grounds for asylum, namely his political activities in Switzerland. The complainant explained that, on 5 December 2009, he had become a member of the Southern Democratic Assembly, which supports the secession of the south from the rest of Yemen. He claims to have written various anti-government articles in opposition newspapers and websites and to have participated in a number of demonstrations in Switzerland. He is now one of the leaders of the movement in Switzerland and organizes meetings.

2.15 On 2 June 2010, the Federal Administrative Court decided to refer the entire case back to the Federal Office for Migration for a fresh decision on the complainant's new grounds for asylum, namely his political activities. On 9 September 2010, the Federal Office for Migration rejected the complainant's application for asylum. Regarding the Consul's threat against the complainant, the Office considered that the complainant's account was not credible. The Office official who had accompanied the complainant to the Consulate of Yemen reported that he had insulted those present at the Consulate and had complained about the Swiss authorities' management and about the situation in Yemen, which might have offended the Consul, but she had not been aware that any threat had been made against the complainant. With respect to the complainant's political activities, the Office inferred from the documents provided that he was not a prominent opponent of the Yemeni Government. The Office considered that the fact that the complainant wrote articles and participated in demonstrations did not suggest that his political involvement was particularly active and pointed out that his claim had been submitted belatedly, after he

had disappeared for two years and had then been found in Biel/Bienne during a police check in 2009.

2.16 On 7 October 2010, the complainant lodged an administrative appeal with the Federal Administrative Court, which dismissed the appeal definitively by decision of 3 December 2010. The Court concluded that the complainant's account regarding threats made by the Consul of Yemen lacked credibility and did not find evidence that the complainant's political activities in Switzerland would put him in danger in his country. The complainant was asked to leave the country before 6 January 2011.

The complaint

3.1 The complainant asserts that his forcible deportation to Yemen would amount to a violation by Switzerland of his rights under article 3 of the Convention, since he would be facing a real risk of being persecuted or subjected to inhuman treatment as a result of belonging to a disadvantaged and marginalized caste and of his political activities in Switzerland.

3.2 The complainant argues that there is a consistent pattern of gross, flagrant and mass human rights violations in Yemen. He submits that the situation is extremely alarming and refers to reports from non-governmental organizations.[2] Activists of the Southern Movement and journalists, dissidents and human rights defenders are the victims of arbitrary arrest, acts of torture and unfair trials. The use of torture is very common in Yemeni prisons and even systematic during interrogations. He maintains that President Ali Abdullah Saleh personally supervised the security agencies, to which he granted special and wide-ranging powers without any administrative or judicial oversight. The complainant also notes the lack of independence of the judiciary due to tribal solidarity and patronage. Furthermore, the law of 1990 on the press prohibits criticism of the President and contains vague definitions of offences. Journalists are therefore frequently intimidated or prosecuted for the content of their articles.

3.3 The complainant asserts that he was subjected to cruel and inhuman treatment during his imprisonment. He submits a medical certificate, dated 17 December 2004, drawn up by a Swiss general practitioner, whom the complainant has been consulting on account of headaches since April 2004. The certificate notes that the complainant complains of severe frontal headaches and a complete loss of the sense of smell. The physician states that examinations of the complainant's sinuses have ruled out the possibility of an infection or a tumour. He further states that the symptoms described are closely related to the ill-treatment sustained by the complainant and that they do not include flashbacks with the impression of reliving traumatic events or depression. He diagnoses a condition of chronic pain as a result of physical and psychological trauma and the possible development of a post-traumatic stress disorder if the complainant is returned. The complainant has also submitted a medical certificate attesting to his hospitalization for atrophic rhinitis (ozaena) from 23 to 25 August 2006, together with the written replies of a doctor to a Federal Office for Migration questionnaire dated 20 December 2006, indicating that ozaena is a rare disease that is found in countries with poor hygiene. It also points out that regular treatment is necessary for his clinical condition to improve and that the living conditions in his country of origin are a problem, as they generally do not allow for sustained treatment.

3.4 The complainant further maintains that his political activities put him at risk of being tortured if he is returned to Yemen. On 5 December 2009, he became a member of the Southern Democratic Assembly, the main secessionist, socialist-oriented party established on 7 July 2007 and banned in Yemen. He has participated in meetings and demonstrations

[2] See Amnesty International, *Yemen: Cracking Down Under Pressure*, London, 2010, p. 67, and Reporters without Borders, *Yemen*, 2009.

in Switzerland[3] and has published anti-government articles in newspapers and on Internet websites.[4] He is now one of the leaders of the movement in Switzerland and is in charge, inter alia, of organizing meetings.[5] The complainant points out that separatists are labelled as traitors and terrorists by the Yemeni authorities and are monitored by State security agencies. As his political activities are very likely to have attracted the attention of the Yemeni security agencies, he faces a real risk of persecution, torture and cruel, inhuman or degrading treatment if returned to Yemen.

3.5 The complainant considers that he has exhausted available domestic remedies. He has submitted two applications for asylum and brought appeals against the rejections by the Federal Office for Migration before the Federal Administrative Court, which dismissed his second application on 3 December 2010.

State party's observations on admissibility and on the merits

4.1 Referring to the Committee's general comment No. 1 (1996) on Implementation of Article 3 of the Convention in the Context of Article 22 (Refoulement and Communications) (para. 8 (b)),[6] the State party considers that torture or ill-treatment allegedly suffered by a complainant in the past is one of the factors that needs to be taken into account in assessing the risk of that person being subjected to torture or ill-treatment if returned to his or her country of origin. The complainant stated before the Swiss authorities that he had been detained between 26 December 2002 and 13 June 2003 in the criminal investigation prison of Sana'a. The security forces allegedly beat him and forced his head into a bucket filled with excrement several times before throwing him into a basin of ice-cold water to wash himself. He was also allegedly sodomized with a Coca-Cola bottle, which caused him bleeding and incontinence for four days. He was also reportedly beaten routinely by security agents with rifle butts and burned with cigarettes. During interrogations, he was allegedly beaten and hung by his feet until he lost consciousness, then locked up alone in a cell measuring approximately 1.5 by 2 square metres until he recovered, at which point he was moved to a communal cell with other detainees. The complainant was allegedly subjected to such ill-treatment every day throughout the first week and three times a week thereafter.

4.2 The State party maintains that the complainant has not provided a precise description of the events that occurred during his detention. At hearings on 2 October 2003 and 12 November 2004, the complainant displayed scars on his feet and indicated that he had a damaged kidney and was unable to concentrate or sleep. He stated that a doctor had found that he suffered from psychological problems. Nevertheless, the State party finds it hard to understand why the ill-treatment to which the complainant was subjected left no physical traces that could be documented in a medical report. The medical certificate provided by the complainant in 2004 has no probative value as evidence, since it is based

[3] The complainant cites the following three events: a demonstration in Geneva on 7 January 2010 calling for the release of political prisoners; another in Bern on 21 April 2010 on the occasion of the sixteenth anniversary of the declaration of war by President Saleh against South Yemen; and a third on 27 November 2010, marking the forty-third anniversary of the establishment of the State of South Yemen and calling for its independence.

[4] The complainant attaches copies of six articles in Arabic with a translation in French.

[5] The complainant provides a certificate dated 30 January 2010 from the chief of the Swiss branch of the Southern Democratic Assembly confirming his activism within the group in Switzerland and another dated 26 January 2011 from a member of the executive committee of the party in the United Kingdom confirming that he is one of the leaders of the Swiss branch of the party.

[6] The paragraph numbers refer to the English version of document A/53/44 (*Official Records of the General Assembly, Fifty-third Session, Supplement No. 44*, annex IX); the corresponding paragraph numbers of the general comment in the French version (*Documents officiels de l'Assemblée générale, cinquante-troisième session, Supplément n° 44*, annexe IX) are numbered from 294 to 302.

on the patient's account of his medical history and therefore merely reflects his complaints about his ailments. Consequently, the complainant's allegations concerning the ill-treatment he experienced in prison lack plausibility, and there is no reason to believe that he would risk being exposed to torture for this reason if returned to Yemen.

4.3 The State party further argues, with reference to the Committee's general comment No. 1, that another factor to be taken into account when assessing the complainant's risk of being subjected to torture if returned is whether he has engaged in political activities in or outside Yemen. The State party notes that the complainant does not mention that he was politically active prior to his departure from Yemen.

4.4 The State party also points out that following the rejection of his asylum application and his two appeals for reconsideration, the complainant went into hiding and was registered as missing on 13 October 2007. After he was found by the police on 7 November 2009 in the course of an identity check in Biel/Bienne, he submitted a second application for asylum to the Federal Office for Migration on the basis of threats that the Consul of Yemen allegedly made against him on 22 February 2007. The complainant became politically involved after eluding the authorities for two years and after seeing his application for reconsideration rejected by the Federal Office for Migration, which he filed in order to avoid being returned following his arrest. He then invoked his political activities in his appeal to the Federal Administrative Court on 11 March 2010 against the dismissal decision of the Federal Office of Migration. He attached his organization membership card to his appeal, six articles criticizing the Government published in his name in a magazine and on the Internet and the report of a demonstration mentioning his name and showing a photograph of him. Yet, along with his communication to the Committee, the author submitted additional information in which he claims to have taken part in three demonstrations, to have organized and participated in various meetings and to be recognized as an active militant for the Southern Democratic Assembly in Switzerland. The State party also notes that during the initial asylum proceedings, the complainant stated that he was illiterate.

4.5 It is likely that the authorities monitor the political activities of Yemeni nationals in exile but that they are not concerned with the identity of particular individuals until their activities go beyond ordinary mass protests and reveal them as serious opponents who pose a threat to the Government. The complainant's mere participation in demonstrations and drafting of critical articles do not make him appear to be a particularly high-profile activist. Consequently, the State party is of the view that the complainant's political activities do not expose him to a probable risk of torture if he is returned to Yemen.

4.6 There are factual inconsistencies in the complainant's assertions that undermine his credibility. The State party maintains that the complainant's account of his escape from prison with the assistance of his former employer is not convincing. The employer was angry at the complainant for having concealed that he belonged to the Akhdam caste and had no reason to fear the authorities' reaction to statements made by the complainant, given that he belonged to a low caste.

4.7 The State party also refers to the complainant's allegations concerning the threat of reprisals that the Consul of Yemen allegedly made against him during his visit to the consulate in Geneva. The complainant also alleged that his name had been included in a list of asylum seekers handed over to the Yemeni authorities, accompanied by a note from the Consul indicating the treatment to which the complainant was to be subjected if he was returned. The State party submits that, while it is true that information enabling the complainant to be identified was transmitted to the Yemeni authorities in accordance with article 97, paragraph 3, of the Asylum Act of 26 June 1998, the Swiss authorities were nevertheless not allowed to mention or provide information relating to an asylum application. The State party also notes that the Federal Office for Migration official who

accompanied the complainant to the consulate reported that the complainant had incessantly insulted all those present and complained about his treatment in Switzerland and the situation in Yemen. In the statement of reasons for its decision, the Federal Office for Migration did not rule out that a hostile exchange between the complainant and the Consul may have occurred. However, the official, who mastered Arabic sufficiently to summarize the gist of the conversation, did not report any threats and did not recall the issue of Akhdam origin having ever been raised. Furthermore, the State party notes that the complainant submitted an application for reconsideration of his application for asylum to the Federal Office for Migration on the same day that he visited the consulate, without mentioning the alleged incident in his application. The complainant referred to the Consul's threats only in 2009 as the basis for a new appeal following his arrest by the police after his two-year disappearance. The State party considers that the allegations of threats by the Consul of Yemen are therefore not plausible.

4.8 The State party also points out that the complainant alleges that he was accused in Yemen of theft, offence against honour and fraudulent procurement of false identity documents, whereas the summons to appear in court, which was contained in a newspaper that he submitted as evidence, cites alcohol consumption as the reason for the legal proceedings. The complainant has provided no suitable explanation in that regard.

4.9 The State party submits that, in the light of the foregoing, there are no substantial grounds to fear that the complainant would be genuinely and personally exposed to torture if he was returned to Yemen. His allegations and the evidence that he has provided do not lead to the conclusion that his return would expose him to a foreseeable, real and personal risk of torture. The State party therefore invites the Committee to find that the return of the complainant to Yemen would not constitute a violation of the international obligations of Switzerland under article 3 of the Convention.

Complainant's comments on the State party's submission

5.1 On 11 October 2011, the complainant submitted his comments on the State party's observations. As regards the situation in Yemen, the complainant notes that the State party recognizes the seriousness of the human rights and security situation. He adds that the situation has seriously deteriorated in recent months and refers to the report of the United Nations High Commissioner for Human Rights of 16 September 2011 (A/HRC/18/21), which confirms a disproportionate use of force by the security forces against popular uprisings in opposition to the Government, summary executions, arbitrary detentions and enforced disappearances.

5.2 The complainant adds that, if returned, he would be at even greater risk now that he has criticized the Consul of Yemen in Geneva, even though the fact that direct threats were made by the Consul is disputed by the State party. The complainant further adds that the State party has submitted only a summary of the report made by the official of the Federal Office for Migration, instead of the report itself, and that the State party has indicated that the official had a "sufficient mastery" of Arabic. The complainant concluded that the official did not master Arabic as a native speaker and that it was likely that she had not been able to identify the insults issued against the complainant.

5.3 Regarding the State party's arguments about the lack of probative value of the medical certificate furnished by the complainant, the latter submits that the certificate reflects the tests performed by the doctor who treated him for six months and is based on a professional evaluation of his state of health. In addition, as regards the State party's assertion that the torture he suffered should have left physical traces, he recalls that he showed the scars on his feet, ankles and legs to the representative of the State party during the first hearing on 2 October 2003 and points out that torture may also leave psychological traces. If there was any doubt as to what caused them, and given that they were recent, the

State party could have had the scars examined by an expert. The State party had the necessary financial and logistical means to have tests done for signs of torture, unlike the complainant, who had just arrived in the country and had no such means. Consequently, the complainant maintains that, in the light of the Committee's general comment No. 1, paragraph 5, he has established an arguable case and has provided medical evidence of torture.

5.4 Regarding the State party's assessment that the complainant's description of his detention was lacking in details, he considers that, in his asylum applications, he gave a consistent description of his detention and provided sufficient details concerning the acts committed against him and their frequency, including a graphic description of how he was raped with a bottle. He adds that it took considerable effort on his part to be able to talk about the incidents of torture and indicates problems relating to confidence and courage as having prevented him from saying more.

5.5 The complainant refutes the State party's allegation that his account of his departure from prison lacks credibility. According to the complainant, his former employer allegedly also helped him to escape out of fear that during the complainant's trial the latter might disclose his employer's engine oil smuggling activities. The State party found it inconceivable that the complainant's former employer should fear the authorities' reactions to statements made by a member of a low caste. The complainant emphasizes that it is nevertheless common knowledge that the Yemeni authorities are feared by the population because of their practice of torture and incommunicado detention.

5.6 The complainant notes that the State party does not contest his involvement in political activities or the fact that the Government of Yemen keeps a watch on political activities in Switzerland. However, the distinction made by the State party between activists and serious government opponents is not an accurate reflection of the situation in Yemen. While charges against and trials of opponents tend to be limited to the leaders of movements, the arbitrary arrest, torture in detention and enforced disappearance of persons involved in political demonstrations are a common occurrence. Hundreds of unarmed demonstrators have been killed since the beginning of the popular uprisings. The complainant therefore considers that he faces a risk of torture, if returned, for publicly criticizing the Government in the press and participating in demonstrations in Switzerland. As regards his illiteracy, the complainant explains that a friend helps him to write his articles but that the opinions expressed in them are his own.

5.7 The complainant concludes that the State party has not expressed significant doubts about the complaint and that, in view of the reports of the situation in Yemen, there are substantial grounds for believing that he could be subjected to torture, within the meaning of article 1 of the Convention.

Issues and proceedings before the Committee

Consideration of admissibility

6.1 Before considering any claims contained in a complaint, the Committee against Torture must decide whether or not it is admissible under article 22 of the Convention. The Committee has ascertained, as it is required to do under article 22, paragraph 5 (a), of the Convention, that the same matter has not been and is not being examined under another procedure of international investigation or settlement.

6.2 The Committee recalls that, in accordance with article 22, paragraph 5 (b), of the Convention, it shall not consider any communication from an individual unless it has ascertained that the individual has exhausted all available domestic remedies. The Committee notes that in the instant case the State party has recognized that the complainant

has exhausted all available domestic remedies. As the Committee finds no further obstacles to admissibility, it declares the complaint admissible.

Consideration of the merits

7.1 The Committee has considered the complaint in the light of all the information made available to it by the parties, in accordance with article 22, paragraph 4, of the Convention.

7.2 The issue before the Committee is whether the return of the complainant to Yemen would violate the State party's obligation under article 3 of the Convention not to expel or return a person to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture. The Committee must evaluate whether there are substantial grounds for believing that the complainant runs a personal risk of being subjected to torture if he is returned to Yemen. In assessing that risk, the Committee must take into account all relevant considerations, pursuant to article 3, paragraph 2, of the Convention, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights. However, the Committee recalls that the aim is to determine whether the individual concerned would personally run a foreseeable and real risk of being subjected to torture in the country to which he or she would be returned. It follows that the existence of a pattern of gross, flagrant or mass violations of human rights in a country does not, as such, constitute sufficient reason for determining that a particular person would be in danger of being subjected to torture on return to that country; additional grounds must be adduced to show that the individual concerned would personally be at risk.

7.3 The Committee recalls its general comment No. 1, according to which the risk of torture must be assessed on grounds that go beyond mere theory or suspicion. Although the risk does not have to meet the test of being "highly probable" (para. 6), the Committee notes that the burden of proof generally falls on the complainant, who must present an arguable case that he or she personally faces a real and foreseeable risk. The Committee further recalls that in accordance with its general comment No. 1, it gives considerable weight to findings of fact that are made by organs of the State party concerned, while at the same time it is not bound by such findings and instead has the power, provided for in article 22, paragraph 4, of the Convention, of free assessment of the facts based upon the full set of circumstances in each case.

7.4 In the present case, the Committee takes note of the complainant's allegations concerning the risk of persecution that he would face in the event of deportation to Yemen because of his caste. The Committee is concerned about reports of persistent discrimination and marginalization against the Akhdam community in Yemen, but notes that this factor in itself is not enough to demonstrate that the complainant faces a real, foreseeable and personal risk of being subjected to torture.

7.5 As regards the complainant's political activities, the Committee takes note of his allegations concerning his political involvement with the Southern Democratic Assembly. The complainant maintains that he is now a leader of the movement in Switzerland and has participated in meetings and demonstrations. The Committee also takes note of the complainant's allegations regarding the seriousness of the human rights violations perpetrated against political opponents in Yemen, whether they are leaders or simple activists. At the same time, the Committee takes note of the State party's doubts about the complainant's political involvement, which he raised belatedly, following the rejection of his second application for asylum to the Federal Office for Migration. The Committee points out that the complainant did not indicate that he was politically active before leaving his country of origin and that his political activities in Switzerland are of a limited nature. The Committee considers that the complainant has not provided sufficient evidence to show that he was conducting political activities in Switzerland of such importance as to attract the attention of the Yemeni authorities. Nor has he put forward other evidence that would

show that he was wanted by the authorities of his country of origin or that he would face arrest in Yemen for his political activities.

7.6 With regard to the allegations of torture, the Committee notes that in the medical certificate dated 17 December 2004 the doctor states that the symptoms described by the complainant, namely severe frontal headaches and a complete loss of the sense of smell, are closely related to the ill-treatment to which he was subjected, but that the complainant does not suffer from flashbacks in which he has the impression of reliving traumatic events or from depression. He diagnoses a condition of chronic pain as a result of physical and psychological trauma and the possible development of a post-traumatic stress disorder if the complainant is returned. Moreover, the complainant has shown that, at the time of his first interview with the Swiss authorities, he had scars from being burned with cigarettes and beaten with rifle butts, as recorded in the report of the interview of 2 October 2003, and that the official at the Federal Office for Migration who interviewed him had recommended that he should be examined by a medical specialist. The Committee notes that the State party has not contested these claims. However, the State party did not proceed to carry out the recommended medical examination and subsequently maintained that the medical certificate of 17 December 2004 had no probative value, that the medical history taken by the practitioner was based on the complainant's statements and that there were no physical after-effects of the ill-treatment that he had described. The Committee considers that, although it is for the complainant to establish a prima facie case to request asylum, namely by submitting medical opinions on the torture to which he was subjected, that does not absolve the State party from undertaking a review of the merits of these medical opinions. Therefore, the Committee concludes that by rejecting the complainant's asylum request without further investigating his allegations or ordering a medical examination, the State party has failed to determine whether there were substantial grounds for believing that the complainant risked being subjected to torture if he was expelled.

7.7 Furthermore, the Committee observes that the complainant claims that he was detained for 5 months and 18 days without due process and that the guards tortured him for having "sullied the honour" of the Yemeni people. The State party does not challenge the fact that he was detained or that he was subjected to torture, but it argues that the complainant did not provide a precise description of the events that occurred during his detention. The Committee also observes that the complainant learned about the summons to appear only after his escape from prison, from a third party, who provided him with a copy of the summons that had appeared in a newspaper. The State party does not contest this information. However, there is still no agreement on the grounds for the charges against the complainant: (a) according to the complainant, he was initially charged with theft and possession of false identity papers; (b) according to the charge published in a newspaper, as reported by the State party and the complainant, he was being prosecuted for alcohol consumption; (c) according to his officially appointed lawyer in Yemen, the complainant was being prosecuted for alcohol consumption, engaging in prostitution and debauchery; (d) according to the complainant's statement received by the secretariat on 21 August 2014, the Swiss Federal Office for Migration had reportedly concluded that the complainant had been convicted in Yemen on suspicion of selling and trafficking in alcoholic drinks.

7.8 However that may be, the Committee notes that, according to his officially appointed lawyer, the complainant is considered by the Yemeni authorities to be a fugitive, and that, according to the complainant, he was tried in absentia under the law applying to fugitives (see paragraph 2.5 above). The Committee also notes that, since the request for evidence made by the complainant's appointed lawyer in 2003, none of the parties involved has had knowledge either of the evidence before the court or of the sentence and penalty that were purportedly issued against the complainant in absentia. Given the uncertainty surrounding the situation of the complainant if returned to his country, the Committee recalls its concluding observations on the report of Yemen in 2010, according to which the

country's security services enjoy complete impunity for acts of torture and that torture and ill-treatment are widespread in Yemeni prisons (CAT/C/YEM/CO/2/Rev.1, para. 8). Consequently, the Committee considers that the complainant faces a foreseeable, real and personal risk of being arrested and tortured again if returned to Yemen, where he is regarded as a fugitive, even if the charges against him, the proof of those charges and his conviction in absentia are not known with any certainty.

8. In the light of the above, the Committee against Torture, acting under article 22, paragraph 7, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, concludes that the State party's return of the complainant to Yemen would constitute a breach of article 3 of the Convention.

9. Pursuant to rule 118, paragraph 5, of its rules of procedure, the Committee invites the State party to inform it, within 90 days from the date of the transmittal of this decision, of the steps it has taken in response to the observations made above.